

BOARD OF APPEALS CASE NO. 5368	*	BEFORE THE
APPLICANT: W K Land Development LLC	*	ZONING HEARING EXAMINER
REQUEST: Special Exception to locate a	*	OF HARFORD COUNTY
day care center in the Commercial Industrial	*	
District; 9 Newport Drive, Forest Hill	*	
	*	Hearing Advertised
	*	Aegis: 7/23/03 & 7/30/03
HEARING DATE: August 27, 2003	*	Record: 7/2503 & 8/1/03

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ZONING HEARING EXAMINER'S DECISION

The Applicant, W K Land Development LLC, is seeking a Special Exception, pursuant to Section 267-53(c) (4)(b) of the Harford County Code, to allow a day care center in a Commercial Industrial District.

The subject property is located at 9 Newport Drive, in the Forest Hill Business Center, which is in the Third Election District, and is more particularly identified on Tax Map 40, Grid 1D Parcel 348, Lot 5. The parcel contains approximately 0.946 acres, more or less.

Mr. Dudley Campbell appeared and testified that he is the president of Bay State Land Services, which is affiliated with the Applicant. He indicated that he is the engineer in charge of the project, and is also one of three members of the Applicant LLC, which owns the subject property. Mr. Campbell stated that he is the official spokesman for the LLC, and that he applied for the requested special exception on its behalf.

The witness began his testimony by referring to the site plan designated as Attachment 3 to the Department of Planning and Zoning's Staff Report. He pointed out that the property is south of Newport Drive and is bordered on the south by MD Rt. 23 (Jarrettsville Road). He stated that the parcel is located in the Forest Hill Business Center, which contains mostly service and office uses. The property is currently vacant. According to Mr. Campbell, the building depicted on the site plan will be constructed for two separate uses. The front portion will be utilized as office space, and the rear will be used as a day care center. The proposed one-story building will be 13,000 square feet in size, and will be built on a concrete slab. The building will be located on the western portion of the property, 25 feet south of the right-of-way to Newport Drive. There will be a parking lot to the east of the building.

Case No. 5368 - W K Land Development LLC

Mr. Campbell indicated that the proposed day care center will be approximately 200 feet from the southern property line. The center will include a 3,500 square foot outdoor play area, on adjacent to the southern wall of the building. The playground will be completely fenced, and landscaping will be planted along the east and west property lines. A landscaping plan will be submitted for approval when the Applicant applies for a building permit.

The witness next testified about the proposed use of the subject property. He stated that the Applicant intends to lease the rear portion of the building to Celebre Learning Center for the operation of a day care center. Access to the facility will be provided via a single entrance to Newport Drive, and will be located at the easternmost portion of the front property line. Mr. Campbell also indicated that this location provides adequate site distance and that the proposed access plan has received preliminary approval from the Department of Transportation.

Mr. Richard Huffman, President and CEO of Celebre Learning Centers was the second witness to testify for the Applicant. The witness indicated that Celebre Learning Centers is a trade name, and that Enchanted Child Care of Forest Hill, Inc. the actual corporate name. Mr. Huffman is the sole shareholder of the corporation.

The witness indicated that Celebre Learning Centers operate 11 day care facilities throughout Maryland. The centers care for approximately 1,400 children between 6 weeks and twelve years of age, and employ approximately 320 people. Celebre currently provides care for children in the Forest Hill area, however, Mr. Huffman testified that additional day care services are needed within the community. He indicated that the subject facility is initially planning to provide care for 130 children; however, because the building is designed to accommodate up to 140 children, the Applicant is requesting permission to care for 140 children at the subject site.

Case No. 5368 - W K Land Development LLC

According to Mr. Huffman, the center will have a fenced outdoor play area divided into two sections; one for toddlers 2 to 3 years of age, and the other for school age children. He also testified that there will be two forms of security at the center, consisting of security doors and closed circuit televisions in the classrooms, which will be monitored through the director's office.

Celebre Learning Center, will be licensed by the Child Care Administration, and also reviewed by the Harford County Department of Health. Staff members will be pre-screened by the corporation's human resources department. Applicants who pass the initial screening will first be trained at the corporate office, and thereafter receive a period of on-site training before being placed in direct charge of children at the facility.

Mr. Huffman stated that the proposed day care center will have no adverse impact on adjoining uses, and that it will actually benefit the community by fulfilling a need for additional child care services. He further stated that both he and Mr. Campbell had read the Department of Planning and Zoning Staff Report, and that they both agree with all conditions recommended by that Department.

Ms. Nancy Lipski, appeared and testified on behalf of the Department of Planning and Zoning, regarding the findings of fact, and recommendations made by that agency. She indicated that the Department recommended approval of the subject request in its August 6, 2003 Staff Report, subject to three conditions set forth in that report. She also emphasized that the Department recommended that all required landscaping be planted prior to the issuance of a use and occupancy permit for the facility.

According to the witness, the Department considered all provisions of Section 267- 9I in connection with this request, and determined that the proposed facility meets all criteria set forth in that Code section. In addition, Ms. Lipski stated that the Department had determined that the proposed use, at the proposed location, would not result in any adverse impact to adjacent properties, or have any greater impact on adjacent uses or properties than if it were located elsewhere within the same zoning district.

Case No. 5368 - W K Land Development LLC

No witnesses appeared in opposition to this application.

CONCLUSION

The Applicant, W K Land Development LLC, is seeking a Special Exception, pursuant to Section 267-53C(4)(b) of the Harford County Code, to allow a day care center in a Commercial Industrial District.

The relevant Provisions of the Harford County Code with regard to special exception uses are set forth below.

Section 267-51 states:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Section 267-52 provides:

“General Regulations

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant of approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.

Case No. 5368 - W K Land Development LLC

- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”**

Section 267-53C(4)(b) of the Harford County Code are set forth below:

Day care centers.

- (b) These uses may be granted in the CI, LI and GI Districts, provided that:**

- [1] Access to the facility shall be from a public road:**
- [2] In order to minimize children's exposure to noise and other emissions from roads, parking areas and industrial activities, the facility outdoor play area shall be fenced and shall be screened with a combination of evergreen and deciduous trees that are at least six feet high;**
- [3] Before opening the facility, the operator shall file emergency evacuations and sheltering plans for the facility with the Emergency Operations Division and the three closest volunteer fire and ambulance companies; and**
- [4] The Board may deny an application if the proposed facility would be located near an industrial use that constitutes a potential hazard to the children in the facility.**

Case No. 5368 - W K Land Development LLC

Harford County Code Section 267-91 provides:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.**
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise on the use of surrounding properties.**
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.**
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.**
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.**
- (9) The environmental impact, the effect on sensitive natural features and**

Case No. 5368 - W K Land Development LLC

opportunities for recreation and open space.

- (10) The preservation of cultural and historic landmarks.”

The Court of Appeals established the standard for determining whether to grant a special exception in the case of Schultz v. Pritts, stating that

“...[t]he special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. (*Emphasis in original*) 291 Md. 1, 11, 432 A.2d 1319 (1981).

The Schultz court further held that “the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327; citing, Anderson v. Sawyer, 23 Md. App. at 624-25, 329 A. 2d at 724 (1974) and Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31, 214 A.2d 146 (1965).

Case No. 5368 - W K Land Development LLC

The Hearing Examiner finds that the Applicant met its burden of proving that the requested use meets the standards and requirements prescribed by Section 267-53C(4)(b) of the Harford County Code. The subject property is zoned CI/Commercial Industrial. There are no industrial uses currently located within the Forest Hill Business Center. Where the parcel is located. Access to the facility will be provided via Newport Drive, a county owned and operated road. The outdoor play area will be totally fenced, and screened with appropriate landscaping. The Applicant has expressed a willingness to abide by the recommendation set forth in the Department of Planning and Zoning Staff Report, that all required landscaping be planted prior to the issuance of a use and occupancy permit for the facility. The center will be required to file all required emergency evacuation and sheltering plans prior to the issuance of a use and occupancy permit.

The Hearing Examiner adopts the findings of the Department of Planning and Zoning that the proposed use meets all criteria set forth in Section 267-9I of the Harford County Code. The Hearing Examiner also finds that the proposed use, at the proposed location, would not result in any adverse impact to adjoining properties. The proposed use is compatible with uses permitted as a matter of right in the CI District, and will cause no adverse impact to any existing uses. Although not technically a requirement for the granting of a special exception, the Applicant has also shown a need for additional day care facilities within the Forest Hill area.

Newport Drive can easily accommodate any traffic generated by the facility. The proposed use will not create any odors, dust, gas, smoke, fumes, or any other environmental impact, and will not interfere with the County's ability to provide emergency or public services. Nor will it interfere with any public use structures, or cultural or historical landmarks.

The Hearing Examiner recommends approval of the application, with the following conditions:

1. The Applicant shall obtain all necessary permits and inspections for the development of the property.
2. A detailed landscaping and lighting plan shall be submitted to the Department of Planning and Zoning prior to the commencement of construction.

Case No. 5368 - W K Land Development LLC

3. All required landscaping shall be planted prior to the issuance of the use and occupancy permit.

Date SEPTEMBER 30, 2003

**Rebecca A. Bryant
Zoning Hearing Examiner**